



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2019-0215; FRL-10025-47-Region 5]**

**Air Plan Approval; Michigan; Partial Approval and Partial  
Disapproval for Infrastructure SIP Requirements for the 2015  
Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove elements of a State Implementation Plan (SIP) submission from Michigan regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The disapproval portion of this action does not begin a new Federal Implementation Plan (FIP) clock, because the FIPs are already in place.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2019-0215 at <http://www.regulations.gov>, or via email to [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/docketgs/commenting-epa-dockets>.

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**SUPPLEMENTAL INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?

II. What is EPA's analysis of this SIP submission?

III. What action is EPA taking?

IV. Statutory and Executive Order Reviews.

**I. What is the background of this SIP submission?**

In this rulemaking, EPA is proposing to approve most elements and disapprove one element of a March 8, 2019 submission from Michigan's Department of Environment, Great Lakes and Energy (EGLE) intended to address all applicable infrastructure requirements for the 2015 ozone NAAQS. EPA is disapproving the portion of the submission pertaining to the visibility protection requirements of section 110(a)(2)(D)(i)(II) with respect to the 2015 ozone NAAQS. The disapproval portion of this action does not begin a new FIP clock, because the FIPs are already in place. EPA will take action in a separate rulemaking on the portion of the submission pertaining to the interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to the 2015 ozone NAAQS.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret

these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13, 2013 Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA's 2013 Guidance).<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>2</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

## **II. What is EPA's analysis of this SIP submission?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. On September 28, 2018, EGLE opened a five-week comment period and provided the opportunity for public hearing. Comments were integrated into the SIP submission.

Michigan provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements

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<sup>1</sup>EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance on Infrastructure SIP Elements Multipollutant FINAL Sept 2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance%20on%20Infrastructure%20SIP%20Elements%20Multipollutant%20FINAL%20Sept%202013.pdf)), as well as in numerous agency actions, including EPA's prior action on Minnesota's infrastructure SIP to address the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS (80 FR 63436 (October 20, 2015)).

<sup>2</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

in section 110(a)(2) for the 2015 ozone NAAQS, as applicable.

The following review evaluates the state's submission.

*A. Section 110(a)(2)(A) - Emission limits and other control measures.*

This section requires SIPs to include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. This submission is required to demonstrate that the state of Michigan can comply with the implementation of the NAAQS 2015 Ozone standard.

Under Part 55 of the Natural Resources Protection Act, (PA 451) promulgated in 1994, Michigan Compiled Laws (MCL) Sections 324.5503 and 324.5512 authorize the EGLE director to regulate the discharge of air pollutants, to create rules and to establish standards regarding air quality and emissions.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable."

We believe that EGLE has the necessary components contained in its MCL and MAC to comply with the 2015 NAAQS Ozone standard. Emission limits for ozone precursors are contained in Michigan

Administrative Code (MAC) Rules 336.1101 through 336.2908. Specifically, MAC Rules 336.1601 through 336.1661 apply to existing sources of volatile organic compounds (VOC), Rules 336.1701 through 336.1710 apply to new sources of VOCs, and Rules 336.1801 through 1834 apply to oxides of nitrogen (NO<sub>x</sub>) from stationary sources. Methods of control and compliance are contained within these rules.

In this rulemaking, EPA is not proposing to approve any new provisions in MCL Chapter 336 or MCL Chapter 324. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

*B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.*

This section requires SIPs to provide for installation and operation of devices used to monitor, compile, and analyze ambient air quality data, and upon request, make such data available to EPA. These requirements include monitoring air quality for the relevant NAAQS pollutants at the proper locations in accordance with network requirements (40 CFR parts 53 and 58), submitting said data to the Air Quality System (AQS) in a timely manner (40 CFR part 58), providing the data with description of any discrepancies to the appropriate EPA Regional

Office (40 CFR 58.10) and obtaining EPA approval for any changes to monitoring sites or network plan.

EGLE's annual reporting requirements are contained in Rules 336.201 through 336.205 of MAC. EGLE enters air monitoring data into AQS, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. An annual network review is submitted to EPA to ensure EGLE's air monitoring operations comply with applicable Federal requirements, including the updated ozone NAAQS standard. The last submission to EPA was approved on October 28, 2020. EPA approved air quality monitors and monitor locations capable of detecting ozone and ozone precursors at the revised NAAQS level. EPA proposes that EGLE has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

*C. Section 110(a)(2)(C) - Program for enforcement of control measures; minor NSR; PSD.*

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure

SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for enforcement of control measures.

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures. EGLE maintains this authority through MCL 324.5501-324.5542. The authority for rulemaking to establish emission limits and promulgate rules for permit programs is contained in MCL 324.5505 and MCL 324.5506. MCL 324.5526 and 324.5528 gives EGLE authority to reasonably inspect facilities and to enforce violations of the established rules, respectively. Civil action may be taken against any entity that violates these provisions under PA 451. Additional enforcement provisions including voluntary agreement of investigation, notice to discontinue pollution, power of investigation and inspection, and other violation rules are contained in MCL 324.5515, 324.5518 and 324.5526-324.5532 respectively. EPA proposes that EGLE meets the requirements of 110(a)(2)(C) with respect to enforceability of control measures contained in its MCL regarding the 2015 ozone NAAQS.

2. Minor NSR.

To satisfy the sub element for preconstruction regulation of the modification and construction of minor stationary sources and the minor modification of major stationary sources, an infrastructure SIP submission should identify the existing EPA



approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant(s). The EPA rules addressing SIP requirements for pre-construction regulatory programs that apply to minor sources and minor modifications are at 40 CFR sections 51.160 through 51.164.

The State of Michigan's minor source permit to install rules are contained in Part 2 (Air Use Approval) of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017. EPA approved changes to the Part 2 rules most recently in a final approval dated July 1, 2019 (84 FR 25180), and therefore proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

### 3. PSD.

To satisfy the sub element regarding the PSD program required by CAA title I part C, an infrastructure SIP submission should demonstrate that one or more air agencies have the authority to implement a comprehensive PSD permit program under CAA title I part C, for all PSD-subject sources located in areas that are designated attainment or unclassifiable for one or more NAAQS. The infrastructure SIP submission should also identify the existing SIP provisions that govern the major source PSD program.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers:

- (i) Enforcement of SIP measures;
- (ii) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program;
- (iii) identification of precursors to PM<sub>2.5</sub><sup>3</sup> and identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>4</sup> condensables in the PSD program;
- (iv) PM<sub>2.5</sub> increments in the PSD program; and,
- (v) greenhouse gas (GHG) permitting and the "Tailoring Rule."<sup>5</sup>

Sources in Michigan that install equipment that will emit ozone precursors are subject to permit-to-install regulations under MAC Rules 336.1201 through 336.1209 and include consideration of VOCs and NO<sub>x</sub>. PSD program regulations (MAC Rules 336.2801 through R 336.2823) require any new major or modified source to undergo PSD review<sup>6</sup>.

a. PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program.

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<sup>3</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as "fine" particles.

<sup>4</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>5</sup> In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

<sup>6</sup> Effective February 16, 2017, EPA updated the modeling appendix at 40 CFR part 51, appendix W (82 FR 5182). EPA proposed approval of Michigan Part 9 rules (86 FR 15837) on March 24, 2021 incorporating the CFR update. The finalization of the rule update will dictate finalization of this element.

EPA's "Final Rule to Implement the 8- Hour Ozone National Ambient Air Quality Standard-Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005. Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.7. EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (see 79 FR 18802), and therefore proposes that Michigan has met the set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program.

On May 16, 2008 (see 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified

precursors to PM<sub>2.5</sub> for the PSD program to be SO<sub>2</sub> and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b) (49) (i) (b) and 40 CFR 52.21(b) (50) (i) (b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b) (23) (i) and 40 CFR 52.21(b) (23) (i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP

revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341).<sup>7</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341). EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (see 79 FR 18802), and therefore

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<sup>7</sup>EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Michigan's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM<sub>2.5</sub> increments in the PSD program.

On October 20, 2010, EPA issued the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of “increments” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in Table 1 below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual

average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). On April 4, 2014 (79 FR 18802), EPA finalized approval of the applicable infrastructure SIP PSD revisions; therefore, we are proposing that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

d. GHG permitting and the "Tailoring Rule" in the PSD program.

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. EGLE has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. In the case *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427, the Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a

major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court's decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V GHG Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."



EPA is planning to take additional steps to revise Federal PSD rules to address the Supreme Court's opinion and subsequent D.C. Circuit's ruling. Some states have begun to revise their existing SIP-approved PSD programs to address these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to ensure that the state's program addresses GHGs consistent with both court decisions.

At present, EPA is proposing that Michigan's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Michigan PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other

previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2015 ozone NAAQS infrastructure SIP, EPA reiterates that NSR Reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for Michigan. EPA approved Michigan's minor NSR program on May 6, 1980 (see 45 FR 29790); and since that date, EGLE and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2015 ozone NAAQS.

Certain sub elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

*D. Section 110(a)(2)(D) - Interstate transport.*

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the

NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

Section 110(a)(2)(D)(i)(II) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

1. Significant contribution to nonattainment.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interference with maintenance.

In this rulemaking, EPA is not evaluating section

110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

### 3. Interference with PSD.

EPA notes that Michigan's satisfaction of the applicable infrastructure SIP PSD requirements for the 2015 ozone NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Michigan's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub> and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Michigan's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub> per the 2010 NSR Rule. EPA is proposing that Michigan's SIP contains provisions that adequately address the 2015 ozone NAAQS.

States also have an obligation to ensure that sources

located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Michigan's EPA approved NNSR regulations found in Part 2 of the SIP, specifically in Michigan Administrative Code sections Rules 336.1220 and R 336.1221, are consistent with 40 CFR 51.165, or 40 CFR part 51, appendix S. Therefore, EPA proposes that Michigan has met all the applicable PSD requirements for the 2015 ozone NAAQS for transport prong 3 related to section 110(a)(2)(D)(i)(II).

#### 4. Interference with visibility protection.

In this rulemaking, EPA is proposing to disapprove Michigan's satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II), transport prong 4, for the 2015 ozone NAAQS. Michigan has a partially approved Regional Haze Plan and is subject to FIPs for a few source categories. See 81 FR 21672 (April 12, 2016) for more information on the FIPs that apply to this area. EPA is proposing to disapprove because Michigan does not have a fully approved Regional Haze SIP; however, because the FIP clocks were started by a different action, and the FIPs are already in place, no further action is needed as a result of this element.

#### 5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain

adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Michigan has provisions in its EPA approved PSD program in Michigan Administrative Code Rule 336.2817 requiring new or modified sources to notify neighboring states of potential negative air quality impacts and has referenced this program as having adequate provisions to meet the requirements of section 126(a). EPA is proposing that Michigan has met the infrastructure SIP requirements of section 126(a). Michigan does not have any obligations under any other subsection of section 126, nor does it have any pending obligations under section 115. EPA, therefore, is proposing that Michigan has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

*E. Section 110(a)(2)(E) - Adequate authority and resources; state board requirements.*

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry

out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources.

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state should provide assurances that its air agency has adequate resources, personnel, and legal authority to implement the relevant NAAQS.

EGLE's SIP program is funded through 105 and 103 grants and matching funds from the state's General Fund. As discussed in earlier sections, EGLE has the legal authority to carry out the Michigan SIP under Act 451 and the Executive Reorganization Order 2011-1. Michigan's PSD regulations provide adequate resources to permit GHG sources. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone NAAQS.

2. State board requirements.

In this rulemaking, EPA is not proposing to approve or disapprove Michigan's satisfaction of the state board requirements of section 110(a)(2)(E) for the 2015 ozone NAAQS. Instead, EPA will evaluate Michigan's compliance with these requirements in a separate rulemaking.

*F. Section 110(a)(2)(F) - Stationary source monitoring system.*

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from

stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

EGLE implements a stationary source monitoring program under the authority of MCL 324.5512 and MCL 324.5503 of Act 451. Additional emissions testing, sampling, and reporting requirements are found in Michigan Administrative Code Rules 336.201 through 336.202 and Rules 336.2011 through 336.2199. Emissions data is submitted to EPA through the National Emissions Inventory system and is available to the public online and upon request. EPA proposes that Michigan has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2015 ozone NAAQS.

*G. Section 110(a)(2)(G) - Emergency episodes.*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.



EGLE has the authority to require immediate discontinuation of air contamination discharges that constitute an imminent and substantial endangerment to public health, safety, welfare, or the environment under MCL 324.5518 of Act 451. MCL 324.5530 provides for civil action by the Michigan Attorney General for a violation as just described. EPA proposes that Michigan has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to authority to implement measures to restrain sources from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment with respect to the 2015 ozone NAAQS.

*H. Section 110(a)(2)(H) - Future SIP revisions.*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

EGLE continues to update and implement needed revisions to Michigan's SIP as necessary to meet ambient air quality standards. Authority for EGLE to adopt emissions standards and compliance schedules is found at MCL 324.5512 and MCL 324.5503 of Act 451. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

*I. Section 110(a)(2)(I) - Nonattainment planning requirements of part D.*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

*J. Section 110(a)(2)(J) - Consultation with government officials; public notification; PSD; visibility protection.*

The evaluation of the submissions from Michigan with respect to the requirements of section 110(a)(2)(J) is described below.

1. Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Michigan actively participates in the regional planning efforts that include business, community groups, state rule developers, representatives from the FLMs, and other affected stakeholders. Michigan Administrative Code Rule 336.2816 requires that FLMs are provided with notification of permit applications that may impact class I areas. Additionally, Michigan is an active member of the Lake Michigan Air Directors Consortium, which consists of collaboration with the States of Illinois, Wisconsin, Indiana, Minnesota, and Ohio. EPA proposes

that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

## 2. Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

EGLE notifies the public if there are NAAQS exceedances and of any public health hazards associated with those exceedances through CleanAirAction!<sup>8</sup>, AirNow<sup>9</sup>, and EnviroFlash<sup>10</sup> as well as posting on its Web site<sup>11</sup>. EGLE published an annual air quality report comparing Michigan monitors to the NAAQS. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

## 3. PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. EGLE's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Therefore, EPA proposes that

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<sup>8</sup> <https://www.wmcac.org/todays-forecast>

<sup>9</sup> <https://www.airnow.gov/>

<sup>10</sup> [https://www.michigan.gov/egle/0,9429,7-135-3310\\_70316\\_4195-101321--,00.html#:~:text=EnviroFlash%20is%20a%20free%20service,match%20expected%20air%20quality%20conditions.](https://www.michigan.gov/egle/0,9429,7-135-3310_70316_4195-101321--,00.html#:~:text=EnviroFlash%20is%20a%20free%20service,match%20expected%20air%20quality%20conditions.)

<sup>11</sup> <https://www.michigan.gov/egle/0,9429,7-135-3310---,00.html>

Michigan has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2015 ozone NAAQS.

#### 4. Visibility protection.

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS.

#### *K. Section 110(a)(2)(K) - Air quality modeling/data.*

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request.

EGLE continues to review the potential impact of major, and some minor, new and modified sources using computer models. Effective February 16, 2017, EPA updated the modeling appendix at 40 CFR part 51, appendix W (82 FR 5182). This action included enhancements to the formulation and application of the EPA's preferred near-field dispersion modeling system, AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model), and the incorporation of a tiered demonstration approach to

address the secondary chemical formation of ozone and PM<sub>2.5</sub> associated with precursor emissions from single sources. EPA proposed approval of Michigan's Part 9 Rule Update on March 24, 2021 (86 FR 15837) incorporating the CFR update. The finalization of the rule update will dictate finalization of this element. Modeling data are available to EPA or other interested parties upon request. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

*L. Section 110(a)(2)(L) - Permitting fees.*

EGLE implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969) EPA approved revisions to the program on February 28, 2006 (71 FR 9934). EGLE's authority to levy and collect an annual air quality fee from fee-subject facilities is found in section 324.5522 of Act 451. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2015 ozone NAAQS.

*M. Section 110(a)(2)(M) - Consultation/participation by affected local entities.*

States must consult with and allow participation from local political subdivisions affected by the SIP.

EGLE regularly works with local political subdivisions for attainment planning purposes and actively participates in regional planning organizations. Rulemaking is subject to notice, comment, and hearing requirements under the Michigan

Administrative Procedures Act, 1969 PA 306 and is authorized in MCL 324.5512. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

### **III. What action is EPA taking?**

EPA is proposing to approve most elements and disapprove one element of a submission from EGLE certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS. The disapproved prong 4 does not begin a new FIP clock, as FIPs are already in place in response to those deficiencies.

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2015 Ozone
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A
(C)2 - Minor NSR.	A
(C)3 - PSD.	A
(D)1 - I Prong 1: Interstate transport - significant contribution to nonattainment.	A
(D)2 - I Prong 2: Interstate transport - interference with maintenance.	A
(D)3 - II Prong 3: Interstate transport - interference with PSD.	A
(D)4 - II Prong 4: Interstate transport - interference with visibility protection.	D
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	NA
(F) - Stationary source monitoring system.	A
(G) - Emergency powers.	A
(H) - Future SIP revisions.	A
(I) - Nonattainment planning requirements of part D.	*
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	A
(J)4 - Visibility protection.	*
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation/participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
D	Disapprove
NA	No Action / Separate Rulemaking
*	Not germane to infrastructure SIPs

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.



Dated: June 28, 2021.

Cheryl Newton,  
*Acting Regional Administrator, Region 5.*

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